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November 12, 1998

**WITHOUT PREJUDICE  
FOR SETTLEMENT PURPOSES ONLY**

**VIA FEDERAL EXPRESS**

Mutha Sundram, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
US Environmental Protection Agency  
Region II  
290 Broadway, 17th Floor  
New York, New York 10007

Re: **LCP Chemicals, Inc. Superfund Site, Linden, New Jersey**

Dear Mr. Sundram:

This firm is counsel to ISP Environmental Services Inc. ("ISP"), a "PRP" in the above-referenced matter. This letter constitutes ISP's "good faith proposal" to enter into negotiations with the USEPA regarding the performance of the RI/FS. ISP's willingness to enter into these negotiations is without prejudice and for settlement purposes only. ISP does not admit any liability for remediation at the LCP site. Indeed, based upon the information available to us, including the references to specific discharges, it appears that the contamination at the site occurred after the 1972 sale by ISP's predecessor to LCP.

Moreover, ISP's willingness to enter into an agreed order is premised upon its understanding that there will be a number of responsible parties who are signatories to the Order so that each party will only pay its fair share of any RI/FS expense. To this



the Order so that each party will only pay its fair share of any RI/FS expense. To this end, ISP would like to pursue with EPA a mechanism to ensure that all of the PRPs participate in the Order. ISP also wishes to discuss with USEPA the status of LCP, and USEPA's willingness to fund any orphan share liability attributable to LCP.

The following paragraphs correspond to the numbered paragraphs in the September 30, 1998 General Notice Letter.

1. Subject to the successful resolution of the issues described herein, and reaching agreement on a mutually satisfactory Order on Consent, ISP is willing to conduct the RI/FS and to reimburse its fair share of the cost associated with USEPA's oversight of the RI/FS.

2. ISP's comments on the draft Administrative Order on Consent for the Remedial Investigation and Feasibility Study are attached.

3. ISP's remediation of its own property under the direction of the New Jersey Department of Environmental Protection ("NJDEP") is a clear demonstration of its technical capacity to carry out the RI/FS. ISP along with other parties who sign the Consent Order proposes that to select the firm it will use to carry out the RI/FS, ISP will utilize a bidding process involving firms that it has previously utilized to conduct similar studies and other firms that are qualified based upon past experience.

4. In demonstration of ISP's ability to finance the RI/FS, please note that NJDEP has accepted a self-guarantee from ISP in connection with the cleanup of the adjacent ISP Linden site.

5. ISP agrees to reimburse the USEPA for its legally recoverable share of cost involved in the oversight of the PRP conduct of the RI/FS.

6. ISP will be represented in the negotiations with the USEPA by:

Dennis M. Toft, Esq.  
Wolff & Samson  
5 Becker Farm Road  
Roseland, NJ 07068  
(973) 533-6538

In addition to resolving the language of the Order, ISP also wishes to discuss having NJDEP become the lead agency to this remediation.

ISP strongly believes that the NJDEP should be the lead agency at the LCP Chemical Site due to its previous experience at the facility and the surrounding area:

1. In the mid-1990's, the Praxair lease-hold portion of the site apparently underwent an ECRA/ISRA cleanup under the supervision of the NJDEP;
2. In 1981, the NJDEP entered into an Administrative Consent Order with LCP Chemical Company dealing with the same brine sludge lagoons which are the focus of the proposed RI/FS.
3. NJDEP is overseeing the remediation of ISP's adjoining property.

The NJDEP already has a long history and knowledge of the LCP site, which it can draw upon to expedite the RI/FS and subsequent remediation. For these reasons, we request, that the lead agency be changed from USEPA to NJDEP, and would like to discuss this change with both agencies.

Please contact me to discuss this matter at your earliest convenience.

Very truly yours,



DENNIS M. TOFT

DMT:jmc  
Enclosure

cc: Ms. Patricia Simmons  
Remedial Project Manager  
Emergency and Remedial Response Division  
US Environmental Protection Agency  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007-1866

**COMMENTS TO PROPOSED ADMINISTRATIVE CONSENT ORDER  
ON BEHALF OF ISP ENVIRONMENTAL SERVICES, INC. ("ISP"), ITS  
PAST AND PRESENT AFFILIATES, PARENTS AND SUBSIDIARIES**

The following are the comments of ISP to the Proposed Consent Order for conducting an RI/FS at the LCP Chemical site:

1. Paragraph 4 of the Consent Order should be modified to reflect that respondents' responsibility under the Consent Order could be modified by a change in ownership or corporate status with the approval of USEPA, which approval should not be unreasonably withheld. This would make Paragraph 4 of the Consent Order consistent with Paragraph 5 which deals with subsequent owners being responsible, yet provide USEPA with the comfort that any subsequent owner would continue to have adequate financial wherewithal to complete the required obligations.

2. Findings of Fact and Conclusions of Law. ISP has several questions about Paragraph 8. First, the property to the north is not owned by GAF Corporation, it is now owned by ISP Environmental Services, Inc. Second, it is not clear where EPA got the information that GAF purchased the land from the US government in 1950. At that point in time, all of the stock of GAF Corporation was held by the US government through the alien property custodian. ISP also does not acknowledge that it discharged any brine sludge to the brine sludge lagoon on the property. ISP also does not agree to the findings regarding the proximity of homes or the presence of threatened or endangered species near the site.

3. With respect to Paragraph 9, it should be clear as described in the paragraph, that all of the documented releases occurred after ISP's ownership. ISP does not admit any responsibility for any releases at the site.

4. With respect to Paragraph 9 as well, it is unclear what steps, if any, LCP took to comply with the 1981 NJDEP Administrative Consent Order and why this matter is now an EPA lead case, given the prior Consent Order was with NJDEP.

5. With respect to Paragraph 10, ISP does not admit that there is ongoing leaching of the contaminants from the site.

6. With respect to Paragraph 13, as noted above, ISP Environmental Services, Inc., including its past affiliates, parent and subsidiary companies are respondents to the Consent Order.

7. With respect to Paragraph 15, ISP does not admit to any documented significant releases at the site or that it is anyway responsible for any documented release. All of the releases described in this paragraph occurred after ISP's ownership.

8. With respect to Paragraph 20, ISP does not admit that it is a responsible party under CERCLA. ISP is willing to enter into a Consent Order and to conduct the RI/FS without any admission of liability on its part in an effort to settle the matter without the need for litigation. Language reflecting this needs to be added to Paragraph 20 even though it is present elsewhere in the order.

9. With respect to Paragraph 23, ISP believes that because of its prior involvement with the site and its involvement in supervising remediation, it is ongoing in neighboring facilities, NJDEP and not EPA should be the lead agency for coordinating a remedial investigation/feasibility study at the site. NJDEP was involved in the 1981 ACO involving LCP and in a prior ISRA cleanup performed by Praxair. Moreover, NJDEP is supervising the cleanup of ISP's neighboring facility. In order to save costs and to coordinate an uniform remediation effort make sense for NJDEP to have this and all of the surrounding sites under its supervision.

10. In Paragraph 24 please change the 21 day requirement and the 14 day requirement to 30 days each.

11. With respect to the RI/FS work plan and schedule, please change the 30 day time period to 60 days in each instance. Given that time is allowed to select an appropriate consultant and a bidding process, it makes sense for these times to be sufficient to allow the consultant to be retained and commence work.

12. With respect to Paragraph E Task 5 Treatability Study, 14 days is insufficient to submit a treatability testing statement of work. Please extend this 30 days.

13. With respect to Paragraph 35, ISP requests that the progress reports be done a quarterly basis rather than a monthly basis. Given the time frames usually involved in undertaking remedial investigations, and feasibility studies, monthly progress reports should be unnecessary.

14. With respect to Paragraph 38 and 50, please advise how the respondents will be provided access to the property and whether EPA has already arranged to obtain access to the LCP site. Given that LCP is still under the jurisdiction of the bankruptcy court, please advise whether EPA has investigated whether bankruptcy court approval is necessary for any access agreement. In any access agreement, GAF will not agree to provide

compensation to LCP since LCP is also a responsible party. Paragraph 50 should be modified accordingly.

15. With respect to Paragraph 40, please confirm that the notice reflected in the parenthesis goes to the Chief of Central New York Remediation as opposed to the Chief of Central New Jersey Remediation.

16. With respect to Paragraph 51, please insert language requiring EPA personnel or other regulatory officials to comply with the site health and safety plan when they obtain access to the property.

17. With respect to Paragraph 60 and 61, it is unfair and a violation of due process to access stipulated penalties while a dispute resolution mechanism is being pursued. If respondent prevails in a dispute resolution it certainly should not be expected to pay stipulated penalties. Additionally, dispute resolution becomes an ineffective remedy if EPA retains a stipulated penalty threat during the pendency of the resolution process. An automatic stay of penalties should be provided.

18. Given the significant amount of the stipulated penalties proposed by EPA, it is important that all of the time frames in the Consent Order be extended so that they can reasonably be achieved by the respondents. Additionally, the Order does not indicate who is the final arbiter of whether a "deliverable is of acceptable quality". Disputes concerning the quality and acceptability of any given deliverable should not automatically lead to the assessment of stipulated penalties. GAF requests that the proposed amounts of stipulated penalties be reduced and that acceptability criteria for deliverables be addressed.

19. Paragraph 69 should be clarified that if EPA requires corrections of an interim deliverable in the next deliverable it will automatically mean that the interim deliverable had been deemed acceptable by USEPA and therefore no stipulated penalty should accrue.

20. With respect to Paragraph 72, again please verify that the notice goes to the Chief of the Central New York Remediation Section.

21. With respect to Paragraph 76A and B, EPA should accept a corporate check and not require payment by cashier's or certified check.

22. With respect to Paragraph 79, since EPA will be receiving interest on late payments of oversight costs, the Order should make clear that late payment of oversight cost does not entitle EPA to obtain stipulated penalties.

23. With respect to the financial assurance requirements, respondent notes that NJDEP has accepted a self-guaranty with respect to remediation of the neighboring property. ISP proposes a similar mechanism in this case.

24. With respect to the RI/FS Statement of Work, ISP reserves its right to provide additional comments once it learns more about the previous work on the site. For instance, given that there was a previous DEP ACO on the site, it may be inappropriate to require performance of all of the items in the Statement of Work.